

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Case No. 14-CR-0403(6) (PJS/FLN)

Case No. 16-CV-2183 (PJS)

Plaintiff,

v.

ORDER

DEJAUN PIERRE DARKYSE
WASHINGTON,

Defendant.

This matter is before the Court on defendant Dejaun Pierre Darkyse Washington's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. *See* ECF Nos. 350, 362, 385.¹ Washington argues that his sentence should be corrected because (1) he was improperly classified as a career offender, and (2) he should have been granted a minor-role reduction under Amendment 794 to Section 3B1.2 of the United States Sentencing Guidelines. The Court disagrees on both counts and thus denies Washington's § 2255 motion.

I. BACKGROUND

Washington pleaded guilty to aiding and abetting the distribution of cocaine base in violation of 18 U.S.C. § 2 and 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). *See* ECF

¹Washington labeled the last two of his three filings as motions "to amend" his first filing. The Court will treat all three filings as a single § 2255 motion for the purposes of this order.

Nos. 109, 161-62. Washington had prior felony convictions for simple robbery (Minn. Stat. § 609.24) and first-degree assault (Minn. Stat. § 609.221, subd. 1). PSR ¶¶ 76-77. The parties agreed that both of these convictions were crimes of violence for purposes of § 4B1.2(a). Based on this conclusion, the parties further agreed that Washington qualified as a career offender under § 4B1.1. *See* Plea Agreement ¶ 7(a); PSR ¶ 9. The Court concluded that Washington's total offense level was 29 (after applying a three-level reduction for acceptance of responsibility); that his criminal history category was VI; and that his Guidelines range was 151 to 188 months. The Court then varied downward and sentenced Washington to 120 months in prison. ECF No. 319 at 2; ECF No. 320 at 1. Four months later, Washington brought this § 2255 motion.

II. ANALYSIS

A. Career Offender

Washington's first claim is that he was improperly classified as a career offender when he was sentenced. The Court rejects this claim for two reasons.

First, this claim is not cognizable under § 2255. Section 2255 does not provide a remedy for "all claimed errors in conviction and sentencing." *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011) (en banc) (quoting *United States v. Addonizio*, 442 U.S. 178, 185 (1979)). Rather, its text allows federal prisoners to challenge a sentence that "was imposed in violation of the Constitution or laws of the United States, or that . . .

was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). This language “provides a remedy for jurisdictional and constitutional errors” that would “inherently result[] in a complete miscarriage of justice.” *Sun Bear*, 644 F.3d at 704 (quoting *Addonizio*, 442 U.S. at 185). But “ordinary questions of guideline interpretation” generally “may not be re-litigated under § 2255,” as long as the defendant’s sentence does not “exceed[] the statutory maximum for the offense of conviction.” *Id.* at 704-06 (citations omitted).

Washington’s sentence of 120 months was well beneath the 20-year statutory maximum for his offense. Therefore, to the extent that his first claim alleges that the Court erred in calculating his Guidelines range, this claim is not cognizable under § 2255.

Second, even if this claim were cognizable under § 2255, it would fail on the merits. Washington argues that his simple robbery conviction does not qualify as a “crime of violence” under § 4B1.2’s residual clause, *see* ECF No. 350 at 13-14 (citing *Johnson v. United States*, 135 S. Ct. 2551, 2556-63 (2015)), or as an enumerated offense under the commentary to the 2015 version of § 4B1.2, *see* ECF No. 385 at 1 (citing *United States v. Bell*, 840 F.3d 963, 967-69 (8th Cir. 2016)). Earlier this year, however, the Supreme Court held that the residual clause of § 4B1.2—unlike the residual clause of the Armed Career Criminal Act—was not subject to vagueness challenges under the Due

Process Clause. *Beckles v. United States*, 137 S. Ct. 886, 892-95 (2017). In addition—and independent of the question of whether simple robbery under Minnesota law qualifies as a “crime of violence” under the residual clause or qualifies as an enumerated offense under the commentary to § 4B1.2—simple robbery under Minnesota law is a “crime of violence” under § 4B1.2’s *force* clause. See *United States v. Jennings*, 860 F.3d 450, 452-57 (7th Cir. 2017); *United States v. Taylor*, No. 15-CR-0091(1) (JNE/LIB), 2017 WL 506253, at *3-7 (D. Minn. Feb. 7, 2017) (explaining why robbery under Minn. Stat. § 609.24 necessarily involves “violent” force). Therefore, the Court did not err when it treated Washington’s simple robbery conviction as a “crime of violence” under the Guidelines for sentencing purposes.

B. Amendment 794

Washington also argues that he should have been granted a minor-role reduction under Amendment 794 to § 3B1.2. The Court rejects this claim for two reasons.

First, a claim arguing for retroactive application of Amendment 794 must be brought as a § 3582 motion, not a § 2255 motion. See *United States v. Bazaldua*, No. 06-CR-0100 (JNE/JSM), 2016 WL 5858634, at *2 (D. Minn. Oct. 5, 2016). Such claims are not cognizable under § 2255. *Id.*

Second, even if the Court were to construe Washington’s claim as a § 3582 motion, it would still fail. The Court can lower Washington’s sentence under § 3582(c)(2) only if

Washington was “sentenced to a term of imprisonment based on a sentencing range *that has subsequently been lowered by the Sentencing Commission* pursuant to 28 U.S.C. 994(o) . . . after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(2) (emphasis added). Washington was sentenced on February 24, 2016, several months *after* Amendment 794 took effect on November 1, 2015. *See* ECF No. 319; *cf.* ECF No. 243 ¶ 52 (noting that “[t]he 2015 Guidelines Manual, *incorporating all guideline amendments*, was used to determine the defendant’s offense level” (emphasis added)); 18 U.S.C. § 3553(a)(4)(A)(ii) (requiring courts to use the Guidelines that “are in effect on the date the defendant is sentenced”). In other words, when the Court sentenced Washington, it *applied* the Guidelines as amended by Amendment 794.² Therefore, even if Washington had brought this claim under § 3582, it would fail on the merits.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein,
IT IS HEREBY ORDERED THAT:

²Although the Court chose not to depart downward under § 3B1.2, the Court explicitly acknowledged that Washington was among the least culpable—if not the least culpable—of the defendants in the case, and gave Washington a substantial downward variance as a result. The Court would not have both departed *and* varied based on Washington’s limited role in the offense; thus, if Washington had received a departure under § 3B1.2, that departure would have been offset—month-for-month—by a reduction in the amount of the downward variance under 18 U.S.C. § 3553(a).

1. Defendant Dejaun Pierre Darkyse Washington's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [ECF Nos. 350, 362, 385] is DENIED.
2. No certificate of appealability will issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 3, 2017

s/Patrick J. Schiltz

Patrick J. Schiltz

United States District Judge